

MEDIATOR CASE STUDY OUTPUTS

November 5, 2015

Created at All-Foreclosure Mediator Event—November 2, 2015

SESSION 1: CASE STUDY

MEDIATION STAGE/TIMELINE

Assignment through scheduling

DISCUSSION FOCUS (based on May 2015 survey)

#6 Session scheduling and rescheduling

#7 Fees and related policies

CASE BACKGROUND

Sixty days after the referral, the beneficiary responds to the mediator's repeated attempts to communicate and provides the name of their legal representative. The representative's first available date is three months out, meaning the date for mediation will be more than 120 days from the date of referral. The beneficiary representative calls the borrower's representative and they both agree to extend the mediation time. A date is agreed on with the mediator's approval. Fees have not been collected from either party at this point.

Forty days before the session, the borrower asks for a reschedule. Both parties agree and the mediator reschedules it. Two days before the scheduled session, the borrower is seeking to reschedule again because of vacation plans. Also, the borrower had just received a TPP offer, which she plans to accept. The beneficiary agrees to reschedule. The mediator is requesting a rescheduling fee. The borrower representative challenges the rescheduling fee request and amount, stating the borrower was not aware of the rescheduling fee. The borrower is also waiting to see if the mediation session occurs before paying her fee. The beneficiary representative supports the challenge. They both complain to Commerce. Commerce cannot find a scheduling notice for this mediation.

1. Required by RCW: What are the relevant provision(s) of the FFA for this case? Brainstorm with the group and record.

Commerce perspective (not an exhaustive list – see statute for complete requirements):

- Session scheduled within 70 days unless otherwise agreed. (RCW 61.24.163(6))
- Scheduling Notice sent to Commerce and parties at least 30 days prior. Notice must meet RCW requirements. (RCW 61.24.163(7)(b))
- Fee set by statute or Commerce; divided equally between parties. (RCW 61.24.163(17))

Also (not included in Case Study scenario, but required within this phase of mediation)

- Commerce assigns mediator & sends Referral within 10 days. (RCW 61.24.163(3)(a)(b))

2. Expected by Commerce: What is the relevant guidance from Commerce for this case? Brainstorm with the group and record.

Commerce Perspective (not an exhaustive list – see Commerce guidelines for more detail):

- Copies of all notices (for all sessions) sent to Commerce and the parties.
- Fee and rescheduling policies disclosed in Scheduling Notices.
- Reschedule requests are mutual and in writing.
- Rescheduling fees and practices are reasonable and consistent.

Also (not included in Case Study scenario, but expected within this phase of mediation)

- Parties contacted and scheduling begins.
- Borrower contacted if non-responsive borrower representative.
- Representation options provided to un- or poorly represented borrowers.

3. Mediator Discretion, Best/Effective Practices: What best/effective practices could the mediator have used in this case (strategies, skills, responses)? Brainstorm with the group and record on the flip chart.

Themes from the mediator group flipcharts:

- Early and clear communication of expectations – highlight deadlines
 - May result in consequences
- Enforce payment and document obligations sooner
- Include late cancellation rescheduling fees

Case Study 1 – Question 3 Mediator Group Responses	
Group 1	<ul style="list-style-type: none"> • Expectation email with critical dates listed & reiterated in subsequent emails • Being aware of borrower's special needs: <ul style="list-style-type: none"> ○ Language issues ○ Literacy issues ○ Competency issues ○ Head in the Sand Issues • Be consistent with re-scheduling fees and times
Group 2	<ul style="list-style-type: none"> • Always send a scheduling notice • Clearly State fees in notice • Always send updated notice • Waive rescheduling fee based on special circumstances • Clarity – consistency statewide based on Commerce new guidelines
Group 3	<ul style="list-style-type: none"> • Sending out scheduling notice to all parties including Commerce • Mediation held within 70 days of referral • Fees should be disclosed to all parties
Group 4	<ul style="list-style-type: none"> • Call/email trustee to determine beneficiary rep • Check with rep typically assigned to bene/trustee • Send certified letter to beneficiary with scheduling notice • Set date within 70 days even if no party input

	<ul style="list-style-type: none"> • If request received within 3 days, only reschedule if other party agrees and work isn't done. Parties pay full \$200 • No session until both parties have paid
Group 5	<ul style="list-style-type: none"> • Mediator sends out their available dates within 70 days of referral to reps and asks for prompt response • Re: Reschedule fees: include rescheduling fee schedule in the scheduling notice • Make sure parties know that fees are for the process, not the session • Reach out to borrower to make sure they understand timeline and fee schedule • Call or email them
Group 5 – other	<ul style="list-style-type: none"> • The scheduling notice with an agreed-upon date for first session • Could Commerce schedule first session 70 days out when the referral is made? • Helpful if mediator availability is considered prior to first scheduling attempt
Group 6	<ul style="list-style-type: none"> • Reach out to all parties within 3 to 5 days of receiving referral <ul style="list-style-type: none"> ○ Intro letter (include timeliness, mediation date, fee policy and all rescheduling fees) ○ Email ○ Phone call • Further reach out to unrepresented borrower
Group 7	<ul style="list-style-type: none"> • Fees too low. Mediator should be paid upon scheduling regardless of whether mediation occurs. • Ability to pay • Very rate base • Waiver of fees – extreme case • Scheduling notice includes invoice • Pay upfront; 40 days “nastygram” • Clients talking without mediator involved handling
Group 8	<ul style="list-style-type: none"> • Mediator control – send out letter with expectations and fees • 1st provide dates or 1 send out letter without date or 1st send out date with scheduled letter • Don't wait 60 days if haven't heard • Set a date if haven't heard and charge reschedule fee if need to be rescheduled or certify BF if no show • Suggest/facilitate agreement. Bene pay both rescheduled fees • Send back to Commerce • Send email to all atty reps asking if this is their case
Group 9	<ul style="list-style-type: none"> • Introduction letter- communication <ul style="list-style-type: none"> ○ Notice all fees ○ Notice all timeframes ○ Use letter to remind parties • Proactive – contact before deadlines <ul style="list-style-type: none"> ○ Use email, calls, refer to letter ○ Contact right RPP deadline – failure to comply – consequences • Reminder 3 to 10 days will cancel if no pay • Ask borrower what they want

Group 10	<ul style="list-style-type: none"> • Mediator should schedule the session and send comprehensive scheduling notice • Provide all parties with criteria for rescheduling
Group 11	<ul style="list-style-type: none"> • Scheduling notifications • Reset v reschedule fees • Reasons for re-schedule request <ul style="list-style-type: none"> ○ Vacation v hardship • Who's dragging their feet • Lack of preparation is not an emergency • TPP discussion – 1st payment made/recd • Clarify expectations and next steps
Group 12	<ul style="list-style-type: none"> • Scheduling notice: <ul style="list-style-type: none"> ○ Timely ○ Include rescheduling fees ○ Include late cancellation and rescheduling fee within 3, 5, 10 days of session ○ Include forfeit session fee • Enforce payment and document obligations sooner

4. **Good Faith: What, if anything, in this case would you take into consideration when determining good faith participation? Brainstorm with the group and record on the flip chart.**

Scenario elements that impact Determination of Good Faith

Themes from the mediator group flipcharts:

- Neither party paid fees by deadline
- No fees
- Mediation timeline not followed
- Non-timely exchange of documents

Case Study 1 – Question 4 Mediator Group Responses	
Group 1	<p>Good Faith:</p> <ul style="list-style-type: none"> • Timely Documents • Timely Payments • NPV Completion by Beneficiary • Meeting within 70 Days
Group 2	<ul style="list-style-type: none"> • Non payment • Only charge the person responsible for rescheduling • Waive the rescheduling fee for one party • Suggest responsible party pay other's fee • Should the mediator intervene to make the process move along, even if parties agreed? • Non-response of beneficiary • Borrower reason not compelling • TPP existence impacts –certify-reschedule

Group 3	<ul style="list-style-type: none"> • Neither party paid fees by deadline • No fees • Mediation timeline not followed • Non-timely exchange of documents
Group 4	<ul style="list-style-type: none"> • 60 Day delay/no contact • Non-payment • Numerous requests with no response • No timely rescheduling
Group 5	<ul style="list-style-type: none"> • Consider borrower's failure to pay • Was there notice of rescheduling fee? • Length of time for response
Group 6	<ul style="list-style-type: none"> • Send warning letter when/if borrower fails to pay fee within 30 days • Set firm deadline and consequences • If too many reschedules – tell parties in advance that they cannot reschedule again • Any reschedule is a mediator's discretion
Group 7	<ul style="list-style-type: none"> • Timeliness – if beneficiary didn't agree to postpone then could be a factor in certification • Unwillingness to pay – would be a factor in certification because waiting for mediation to occur to decide whether to pay
Group 8	<ul style="list-style-type: none"> • Non-payment of fees • TPP was offered • Certify as agreement – put in comments bad faith
Group 9	<ul style="list-style-type: none"> • No teamwork intent – look at actions • Pay fees owed • TPP nothing to do with good faith • Listening to directive of mediator • Are delays helping parties working towards decision?
Group 10	<ul style="list-style-type: none"> • Fees, mediator responsibility, mediator investment of time
Group 11	<ul style="list-style-type: none"> • Timeliness of document exchange • No fee collection yet requested several reschedules • No surprises if issues communicated throughout referral process
Group 12	<ul style="list-style-type: none"> • Borrower d/n pay initial fee • Borrower vacation (if beneficiary h/n agreed) • Beneficiary delay in id rep (if borrower h/n agreed to postpone)